

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-0555 CS
Controlled Substance Excise Tax
For Tax Period: 08/18/97

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax – Imposition

Authority: IC 6-7-3-5

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer was assessed the controlled substance excise tax on August 18, 1997. The assessment was based on an executed search warrant served on the taxpayer's residence and other personal property. The taxpayer shared her residence with Mr. M. Both taxpayer and Mr. M were served identical assessments based on the same controlled substances. Taxpayer protests this assessment and claims she was not in possession of all the controlled substances. Additional relevant facts will be provided below, as necessary.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

Indiana Code section 6-7-3-5 provides for the imposition of the controlled substance excise tax on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

The taxpayer claims the controlled substance excise tax assessed against her was not accurate. Taxpayer claims much of the controlled substances were found in Mr. M's sole possession and not in their shared residence. Taxpayer submits an Indiana State Police Property Record and Receipt report. The report lists items 900 through 909 as having been found in Mr. M's pockets and truck. Taxpayer argues she had no control over the contents of Mr. M's pockets or his truck.

The taxpayer has proven to the Department's satisfaction that the taxpayer was not in possession of those controlled substances found in Mr. M's pockets and truck. Items 900 through 909 included 104.58 grams of cocaine and 1.54 grams of methamphetamines. Accordingly, taxpayer's assessment will be adjusted to remove these controlled substances.

FINDING

Taxpayer's protest is sustained in part. Taxpayer's controlled substance excise tax will be adjusted to include only those controlled substances found in her possession.